

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) Case No. 4:23CR3019  
)  
Plaintiff, )  
)  
vs. )  
)  
ANTHONY UNOCIC, )  
) Lincoln, Nebraska  
Defendant. ) September 22, 2023

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN M. GERRARD  
SENIOR UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: Mr. Daniel D. Packard  
Ms. Danielle Fliam  
U.S. Attorney's Office  
100 Centennial Mall North  
Suite 487  
Lincoln, NE 68508-3865

FOR THE DEFENDANT: Mr. Korey L. Reiman  
Federal Public Defender's Office  
100 Centennial Mall North  
112 Federal Building  
Lincoln, NE 68508

COURT REPORTER: Ms. Lisa Grimminger, RDR, CRR, CRC  
100 Centennial Mall North  
Room 587  
Lincoln, NE 68508  
(402) 437-1908

Proceedings recorded by mechanical stenography, transcript  
produced with computer.

1 (At 3:31 p.m. on September 22, 2023; with counsel present;  
2 WITHOUT the defendant:)

3 THE COURT: This is United States of America versus  
4 Anthony Unocic. How does he pronounce it? Is it Unocic?

5 MR. REIMAN: Yes.

6 THE COURT: Yeah. Anthony Unocic. This is Case  
7 Number 4:23CR3019. It comes on today. This is the 22nd of  
8 September. Excuse me. We had a brief informal pretrial  
9 conference to handle some matters as far as stipulations and  
10 opening statements and time limits, et cetera, and now we're  
11 going to handle the matters that need to be taken up on the  
12 record as far as motions in limine and some preliminary  
13 instruction matters.

14 So, counsel, would you please enter your appearance.

15 MR. PACKARD: Dan Packard and Danielle Fliam for the  
16 government.

17 MR. REIMAN: Korey Reiman for Mr. Unocic.

18 THE COURT: All right. Mr. Unocic is not here  
19 because these are preliminary motions. It's a Friday  
20 afternoon. Mr. Unocic will be here Monday morning when we  
21 begin trial.

22 I do want to note on the record -- well, let's just take  
23 it up now so we don't forget it. The government has already  
24 indicated that it will be requesting a motion to sequester  
25 witnesses, and Mr. Reiman has indicated he would want that

1 motion to be reciprocal, and I will grant that motion. So,  
2 both parties, you know who you're calling as witnesses, so  
3 you'll need to patrol the courtroom to make sure that the  
4 witnesses are sequestered, but I will grant the joint motion to  
5 sequester.

6 It is not anticipated that a *Missouri v. Frye* hearing will  
7 be held. There were no formal plea agreements that were  
8 offered. I'll ask Mr. Unocic that on Monday morning, but it's  
9 the Court's understanding that there were no formal plea  
10 agreements offered so none were either tendered or rejected.

11 All right. Now let's take up the matter of preliminary  
12 jury instructions. Initially I had supplied the preliminary  
13 jury instructions to counsel a few weeks ago when this case was  
14 initially going to be tried, and I've submitted them again  
15 today. At the very bottom of page 2, the last full paragraph  
16 that's at the bottom of page 2 and the top of page 3, it's in  
17 blue right now. It won't be when it's officially on the  
18 record. But that is the elements of the offense.

19 And the Court is proposing that at least in the  
20 preliminary jury instructions that what will be given is as  
21 follows: The government has charged Mr. Unocic with  
22 threatening to assault a federal law enforcement officer,  
23 period. This will require the government to prove beyond a  
24 reasonable doubt that between on or about January 1 of 2022,  
25 and on or about April 12 of 2022, Mr. Unocic made a threat to

1 assault a federal law enforcement officer, comma, that  
2 Mr. Unocic was aware others could regard his statement as  
3 threatening violence, comma, and that Mr. Unocic made the  
4 threat with the intent to retaliate against the federal law  
5 enforcement officer on account of his performance of his  
6 official duties.

7 And so that is the elements charge, at least  
8 preliminarily, that I'm giving to the jury. I asked at the  
9 informal conference if there was any objection to the  
10 preliminary jury instructions. The government did not have an  
11 objection, but Mr. Reiman did on behalf of Mr. Unocic, and I  
12 want you to be able to state that for the record, please.

13 MR. REIMAN: Your Honor, consistent -- I'd previously  
14 filed some proposed instructions, and consistent with those --  
15 I would submit that consistent with the *Counterman* opinion,  
16 *Counterman vs. Colorado*, that the preliminary instructions  
17 should include that Mr. Unocic consciously disregarded a  
18 substantial risk that his communication would be viewed by  
19 Agent Tubbs as threatening violence.

20 And I would note there's probably some disagreement about  
21 "by Agent Tubbs or others," but it's my position that it should  
22 be by Agent Tubbs, that the defendant intended or ignored a  
23 substantial risk that Agent Tubbs would view that as  
24 threatening violence. So I would ask that the preliminary  
25 instruction be modified consistent with that proposed

1 instruction.

2 THE COURT: Okay. I might meet you partway there.

3 MR. REIMAN: Okay.

4 THE COURT: Let me tell -- I'm going to think out  
5 loud here with my clerk that's here. What I am utilizing and  
6 what I'm likely to utilize in the final jury instructions --

7 Actually, Shayna, I'm going to have you print out before  
8 we leave today the proposed final jury instruction number 8,  
9 which will have all the elements of the offense.

10 And what I'm proposing in the final jury instruction --  
11 and it's taken from the federal jury instructions, the Modern  
12 Federal Jury Instructions, Criminal 14.02, and it takes into  
13 account *Counterman* and all of the cases, but let me just tell  
14 you what they have set forth and why I plan on instructing what  
15 I have.

16 In cases that involve intent to impede or intimidate or  
17 interfere, the rule does apply that there must be at least some  
18 expectation that the threat would be communicated to that  
19 official, okay, under those cases, but it is not required when  
20 the defendant, as here, as in this case, is charged with the  
21 intent to retaliate since that intention may exist regardless  
22 of whether the subject is aware of the threat or not.

23 And I'm citing to -- and I'll have it in the instructions,  
24 but I'll give you the cases that I'm looking at, and I'm citing  
25 *The United States vs. Nguyen*, which is an Eighth Circuit case.

1 I'm also citing to the Modern Federal Jury Instructions,  
2 Criminal 14.02. I'm going to give you all of this in my  
3 proposed instructions. And I'm relying on *Nguyen*, and *Nguyen*  
4 explained that while a threat made with the intent to impede,  
5 intimidate, or interfere may require evidence that the expected  
6 threat would be communicated to the official, the same is not  
7 true in intent to retaliate cases.

8 Okay. But *Nguyen*'s a little bit different than this case.  
9 I'm relying upon *Nguyen* as well as the Federal Modern Jury  
10 Instructions, and I'm aware there's a couple of district court  
11 cases that went the other way, that went your way, Mr. Reiman.  
12 I'm more persuaded by the Modern Federal Jury Instruction that  
13 there is a difference between impede, intimidate, or interfere  
14 versus retaliate, you know. One requires the officer know.  
15 The other one doesn't. But with relation to *Counterman*, the  
16 second element would be that Mr. Unocic either knew or intended  
17 that others would regard his statements as threatening violence  
18 or recklessly disregarded substantial risk that others could  
19 regard his statement as threatening violence. That's the  
20 subjective test, and that's under *Counterman*.

21 I'm thinking, Shayna, we should probably have that in the  
22 preliminary, don't you?

23 LAW CLERK: Okay. Yeah.

24 THE COURT: Yeah. So the *Counterman* subjective  
25 portion of it would go into the preliminary jury instruction,

1 but what would not go into the preliminary or the final is that  
2 Tubbs needed to know. In other words, it's the listener's  
3 intent; so those that were in jail and heard him and  
4 testifying -- now, you are free to argue, and I'm going to give  
5 you that opportunity. That argument is available to you in  
6 defense.

7 MR. REIMAN: Okay.

8 THE COURT: I'm not going to prohibit you from  
9 arguing that, that, you know, he was either blowing -- or  
10 arguing or blowing smoke or whatever, but he wasn't serious.  
11 That wasn't his intent. And of course I'm going to give the  
12 government an opportunity to let the witnesses testify that  
13 this is also what he said, you know, this is what he was  
14 telling us, and yeah, I think he was serious. But, I mean,  
15 that's a fair argument. That's what the case is about, okay,  
16 so I am going to let you argue that, but I will not be  
17 instructing that Tubbs had to know. Okay? And so it's  
18 those -- for those very reasons.

19 And so what I would like you to do, Shayna, is let's give  
20 Instruction Number 7, which is a description of the charge,  
21 what he's actually charged with. Okay. Instruction Number 8  
22 is the elements instruction, and Instruction Number 9, Threats,  
23 Defined. Instruction Number 10, Law Enforcement Officer,  
24 Defined. So if we could give them those instructions.

25 All right. And we'll give you those before you leave.

1 So, I mean, that's the heart and the nuts of the case. So the  
2 government will know what it needs to prove, you know what you  
3 have to defend against, and I'm going to let you make your --  
4 you've made your argument now. I'm going to let you make it at  
5 the instruction conference. I mean, it's a fair debate. It's  
6 a fair argument whether or not Tubbs had to know or not. I  
7 don't think he does under the retaliation, but if I'm wrong,  
8 the Eighth Circuit will tell me that, and we'll do this one  
9 again. Okay? But I just want you to know why I'm doing what  
10 I'm doing.

11 Okay. All right. So I will make that change as to  
12 paragraph 3. I'm going to include the second element, the  
13 *Counterman* element essentially so...okay. All right. So  
14 that's it on the preliminary jury instructions. And I'll get  
15 those to you hopefully yet today before we leave.

16 Okay. Are you all going to be here for just a little bit  
17 if we -- I mean, we'll get you both those instructions and the  
18 instructions I just talked about, Numbers 7 through 10, so you  
19 know the nuts of it.

20 Okay. All right. Now let's go to the motions in limine.  
21 I think I've ruled on some of them but not all of them, and  
22 let's just take them in order.

23 So the first one I had was from the government. It was  
24 filing number 44, and the first two are character evidence and  
25 prior -- the government wants to exclude from trial any and all



1 testimony or evidence or argument regarding character evidence  
2 or prior bad acts of government witnesses Tracy Hoops, Ryan  
3 Rivera, and David Scroggins unless offered in accordance with  
4 the Federal Rules of Evidence. Okay. And number two, the  
5 alleged facts and circumstances underlying Tracy Hoops' pending  
6 criminal cases, including but not limited to, and then it's the  
7 April 22 arrest for possession of a firearm and the April 4  
8 arrest for Laramie County.

9 I'll just tell you straight up, you know, prior bad acts  
10 are not admissible under 608, but convictions are admissible  
11 under 609, also if there's anything else as far -- that would  
12 go to truthfulness, but I don't see anything here that does,  
13 that would be admissible also.

14 But I guess I want to know what we're -- I don't want to  
15 enter a motion -- I'm going to tell you I'm going to follow the  
16 rules of evidence. So some of the acts of Hoops, Rivera, and  
17 Scroggins, if they're prior convictions, are going to come in,  
18 okay, but the prior bad acts are not going to come in, but I  
19 don't know what maybe Mr. Reiman will try to get in. You know,  
20 sometimes we talk about these and there's nothing to argue  
21 about because they're not offering anything anyway but -- so  
22 both of you tell me what you're talking about before I know  
23 whether I need to enter a motion in limine.

24 MR. PACKARD: Sure. Judge, I acknowledge that my  
25 motion basically says, "Please follow the rules of evidence."

1 I'm not -- you know, there's not something out here that I  
2 think is going to happen. I think knowing in advance will  
3 allow me to sort of make a decision and let Mr. Hoops know if,  
4 for example, something that he's not yet been convicted of is  
5 fair game, if I can. That was the motive behind this.

6 You announced two arrests. Well, it goes into the next  
7 page. There's more arrests so...just so you know, there's more  
8 stuff. I think he has four total cases pending, and I expect  
9 that if -- I expect that he's going to -- I'm going to ask, "Do  
10 you have pending charges?" He's going to be in a jumpsuit  
11 here. And then I'm not going to ask him about the underlying  
12 facts. I think if Mr. Reiman asks him about facts that  
13 underlie his pending cases, he would say what he's charged  
14 with, but he wouldn't get into the facts that underlie those.

15 And if he's allowed to go further, then Mr. Hoops would  
16 then assert his Fifth Amendment right, and I'm trying to save  
17 the time of us going through that unless we all know in advance  
18 there's something probative of truthfulness that we're going to  
19 go into, and that was the reason that I filed paragraphs 1 and  
20 2, because Hoops does have pending cases.

21 THE COURT: Yeah. And, well, the other thing is, I  
22 mean, if there's -- but, I mean, maybe the two of you know. I  
23 don't. If there were any promises that have been made for his  
24 testimony, you know, that's fair game also but --

25 MR. PACKARD: Right, and I'm going to ask him about

1 that. And there's no cooperation agreement, but I'm sure he's  
2 expecting that this will look favorably on any outcome he has  
3 in any of his cases, and I'm going to ask him that. "What are  
4 you expecting out of this?" And I know what I'd like him to  
5 say. I can't say -- I'm not sure exactly how he'll say that,  
6 but I think that he would admit that, yeah, I hope some judge  
7 somewhere will consider that I participated in this. So I  
8 think that's fair game. Just the facts that underlie it, I  
9 don't.

10 THE COURT: I think that's fair game, and I think  
11 it's fair game for Mr. Reiman to say let's talk about that.

12 MR. REIMAN: And I think he's looking at a number of  
13 years in prison, I think it's fair to say, from a number of  
14 these different prosecutions. I think it was Hoops that  
15 actually did reach out initially and try to get -- he did try  
16 to get some -- wasn't it Hoops that reached -- or was it Rivera  
17 whose attorney reached out and tried to get the U.S. Attorney  
18 or somebody on board to give him a cooperation deal, and they  
19 said no?

20 MR. PACKARD: There was never any cooperation. It  
21 was just, "Look, this guy's going to do this," so he tells his  
22 lawyer, and the lawyer, I'm sure, thinking that it would be  
23 beneficial to client, put things in motion that led to an  
24 interview. So I'm not so naive to say that there wasn't a  
25 motive there, but it wasn't --

1 THE COURT: Let me just say this. And it's not going  
2 to be unusual to any type of cooperation case or anything. I  
3 don't want to get into any underlying facts or anything, but it  
4 is fair for the prosecution to say -- and it's also fair for  
5 you to get into, okay, I was charged with this, this, and this,  
6 okay, and I could be facing 40 years or whatever. And, you  
7 know, were you made any promises? To which he'll probably say  
8 no.

9 But, you know, were you working with the prosecution?  
10 Were you attempting -- I mean, do you expect something out of  
11 this? You know, that's fair for both you to ask, Dan, and fair  
12 for you to go into, Korey, but not the underlying -- you know,  
13 in other words, what were you charged with? You know, there's  
14 some potential penalties here, and are you expecting to get  
15 something out of it? And he'll say whatever he's going to say.

16 MR. REIMAN: Okay.

17 THE COURT: Is that fair? So I mean that's -- so I  
18 am going to deny the government's motion in limine with that  
19 understanding. Okay? So I will sustain it to the extent that  
20 the underlying facts of what is being charged is not to be  
21 inquired into by either the government or the defense. Okay.  
22 So underlying facts of what support the charge. But what is  
23 being charged, what the potential penalties might be, what the  
24 expectations may be of favor or non-favor, that is all fair  
25 game for impeachment.

1           Okay. I think that handles, does it not, Mr. Packard,  
2           numbers 1 and 2?

3           MR. PACKARD: It handles it. Thank you.

4           THE COURT: Yeah. And paragraph number 3, yes,  
5           potential punishment and any collateral consequences, I don't  
6           allow. I anticipate you're not going to get into that,  
7           Mr. Reiman. That would be of the defendant's potential  
8           punishment and collateral consequences. In fact, I'll  
9           specifically --

10          MR. REIMAN: Oh, yeah. As it relates to Mr. Unocic?

11          THE COURT: Yes.

12          MR. REIMAN: Okay.

13          THE COURT: Yeah. In fact, I will specifically  
14          instruct the jury that I'm the one that sentences and you're  
15          not to consider that at all. Okay? So to the extent -- I'll  
16          sustain that.

17          Okay. Then number 4. Again, the government's asking me  
18          to follow the rules of hearsay, which I will, but I do  
19          understand what -- what's being argued is that unless somebody  
20          calls -- in other words, there are three witnesses that said I  
21          heard this, this, and this, and there are other ones that  
22          potentially didn't hear anything. Okay? And what the  
23          government is asking is you can't argue about that -- or you  
24          can't say that unless you bring them in to say, you know, I was  
25          in jail with him for three months, and I didn't hear anything.

1 MR. PACKARD: Right. I'm moving in limine to prevent  
2 any questions about non-testifying inmates. And I'll just be  
3 up front. Scroggins isn't going to testify. It's going to be  
4 Hoops and Rivera. Those are the only two that are inmates that  
5 are going to testify. So questions about what others -- any  
6 other inmate said I would move in limine to exclude unless we  
7 approach and, you know, there's some discussion about how it  
8 might be relevant, and I have outlined the argument in my  
9 brief.

10 THE COURT: Yeah. And, Mr. Reiman, anything?

11 MR. REIMAN: I think the agents interviewed five or  
12 six witnesses. I think three had heard something, three  
13 hadn't. I think it's a fair question to ask the agent, "You  
14 interviewed a number of inmates out at that jail that day,  
15 didn't you?"

16 THE COURT: And --

17 MR. REIMAN: That seems fair.

18 THE COURT: That -- without anything further, that is  
19 a fair question.

20 MR. REIMAN: Okay.

21 THE COURT: Okay? And you'd be asking the agent. I  
22 mean, you're not -- so we've got Inmates Hoops and Rivera that  
23 would be -- obviously it doesn't make any difference what they  
24 know -- you're going to be asking them what they knew as far  
25 as -- there's nothing that they can say about why the other

1 inmates didn't testify or anything, but you'd be asking the  
2 agents, okay, you interviewed six people or seven people, and  
3 we've got two of them here.

4 MR. REIMAN: Yes.

5 THE COURT: Okay. That's fair. Okay? So to that  
6 extent the -- I guess the government's motion would be  
7 sustained in part and overruled in part with that  
8 understanding.

9 Okay. All right. I think that is -- I believe that's it  
10 from filing number 44, is it not?

11 MR. PACKARD: That's it, Judge, on filing 44.

12 THE COURT: Okay. Then the -- what do I have on 44?  
13 Then we've got the defendant's motion in limine, which is  
14 filing number 48. Let's take those in reverse order. The  
15 second -- I've already written on that.

16 MR. REIMAN: You have.

17 THE COURT: And so the underlying -- from the  
18 April 2015 arrest of Unocic, any evidence about drugs or  
19 paraphernalia or any of that doesn't come in.

20 I don't know what paragraph number 1 is. You have to --

21 MR. REIMAN: So I think it was Hoops claims in his  
22 statement that as Mr. Unocic was telling -- sharing his story  
23 and what he was, you know, going to do to this agent, he was  
24 also bragging about some of his prior past. One of the things  
25 he indicated, that when he was young, he brought a gun to

1 school and was going to blow all those kids away, and  
2 intertwined with that he said something about he was committed  
3 to a mental institution when he was younger also.

4 So obviously that's pretty prejudicial and has no  
5 relevance to this case, or whatever relevance there is, is  
6 greatly outweighed. So I would ask that we not get into  
7 anything about school shootings or his mental health commitment  
8 back when he was a child that he relayed to -- it was Hoops, I  
9 believe.

10 MR. PACKARD: No objection. That's fine. I don't --

11 THE COURT: You're not planning on getting --

12 MR. PACKARD: No. I think the only thing that I --

13 THE COURT: You should instruct Hoop- -- I mean,  
14 because you may have questions, and it may come -- if there's  
15 an objection, I would sustain it right away, but if you can --  
16 when you're talking with Hoops in preparation for his  
17 testimony, the school shooting or mental health commitment or  
18 whatever is not -- I mean, I know you're not going to ask him  
19 about it, but he's not --

20 MR. PACKARD: I've talked to him about it, and I've  
21 told him not to volunteer it. I just don't want it to be a  
22 basis for a mistrial if it comes out. I mean, we can't predict  
23 that, but I'm just saying.

24 THE COURT: But at least I know what -- I can stop it  
25 right away.



1 MR. PACKARD: Yeah. And I'm not going to ask him  
2 about it, and I'm pretty sure I've told him not to talk about  
3 it so....

4 THE COURT: Okay. Fair enough. But I understand  
5 we're not dealing with nuns and priests here so...but at least  
6 I'm watching. At least I know what I'm watching for, then. So  
7 I will sustain the motion, and I'll watch -- I'll anticipate  
8 that it's not going to occur, but I'll watch for it.

9 MR. REIMAN: There was one other thing that's kind of  
10 connected to this drug type of stuff that the Court's already  
11 ruled on that I should have brought up, but Mr. Unocic -- I  
12 guess pursuant to Uno's statement -- Mr. Unocic's statement to  
13 Hoops and Rivera, he was making this suppressor from this  
14 solvent trap, and he tells them that the suppressor was for  
15 Uncle Charlie, who he says is also his drug dealer.

16 So I understand that if the Uncle Charlie part of that  
17 comes in, but I am asking that they not get into that was  
18 Mr. Unocic -- Uncle Charlie was Mr. Unocic's drug dealer.

19 THE COURT: Okay.

20 MR. PACKARD: And again, I've talked -- we've talked  
21 with Mr. Hoops about that. The drug evidence is not admissible  
22 and it shouldn't be volunteered but --

23 THE COURT: Yeah. Okay. But --

24 MR. PACKARD: You know, I don't plan on asking about  
25 Uncle Charlie. I would ask him --

1 THE COURT: But that's good to know, though. If I  
2 hear "Uncle Charlie," my ears will perk up, and we'll get to  
3 another topic.

4 MR. PACKARD: And I'm not sure if it's Charlie or  
5 Rico or what it is.

6 MR. REIMAN: Somebody's uncle.

7 MR. PACKARD: It might be Uncle Rico. You said Rico  
8 before. I don't remember.

9 MR. REIMAN: I think it's Charlie.

10 THE COURT: If I hear Uncle Somebody, I'll be  
11 listening. All right. Fair enough.

12 MR. PACKARD: But he will talk about the suppressor  
13 part of it.

14 THE COURT: Oh, yeah.

15 MR. PACKARD: So...okay.

16 THE COURT: No. That's fair. I mean what -- I  
17 understand the defendant's concern, you know, the suppressor  
18 and why he was doing it, et cetera, but if it had to do for  
19 protection of drugs or his drug involvement or something, we  
20 would stop it at that.

21 All right. So I think as to filing number 48 -- and my  
22 ruling on that was basically contained in filing number 50. So  
23 I think that covers 48, does it not, Korey?

24 MR. REIMAN: Yes.

25 THE COURT: All right. Then I believe there was

1 filing number 56. Is that right? The next one would be  
2 defendant's objection, and I think some of this, if not all of  
3 it, may be moot now. I mean, I know I haven't gone through in  
4 detail the government's exhibits, but I think some of -- a  
5 bunch of the updated Exhibit 11 removes the issues underlined,  
6 do they not? Or if not, you tell me.

7 MR. REIMAN: Okay. So are you guys going with what  
8 you emailed me?

9 THE COURT: Wait just a second. What, now?

10 (Discussion off the record.)

11 THE COURT: Well, let me talk about two of them that  
12 are still at issue, I think.

13 MR. REIMAN: Okay.

14 THE COURT: You wanted to prohibit the length of the  
15 sentences and the -- let's see what else -- oh, and the  
16 supervised release conditions that were on there. And I will  
17 say this. I allow convictions to come -- you know, the  
18 certified copies of the convictions to come in, and the length  
19 of the sentences are normally on there, and that's -- the  
20 Eighth Circuit allows that under *Crenshaw* and *Shelley* and --

21 MR. REIMAN: But those come in as part of  
22 impeachment. These aren't coming in under that rule would be  
23 my rebuttal to that. Yes, when somebody's impeached with a  
24 prior criminal conviction, they get to get into the sentence  
25 and all of that, but that's not -- we're not using that for

1 this purpose here. The only reason these are coming in is  
2 because it's intertwined to explain....

3 THE COURT: What the underlying offense is.

4 MR. REIMAN: Right. So I would submit this is apples  
5 and oranges about how much we're going to let in about this,  
6 and I don't think it's the jury's -- I don't see the relevance  
7 of the jury knowing how long he got on that sentence and  
8 especially the supervised release. That thing is replete  
9 with --

10 THE COURT: I agree with the --

11 MR. REIMAN: Okay.

12 THE COURT: The supervised release I'm not  
13 intending...the conditions of supervised release are -- if  
14 they're relevant at all, they're outweighed by prejudicial  
15 effect. So I'm just talking about the length of sentence. I'm  
16 not sure that you need that from the government's sake.

17 MR. REIMAN: And also I believe in Exhibit 1,  
18 Exhibit 1 has a list of the forfeiture counts with all this  
19 list of ammunition and guns that they found in his place. I  
20 would submit under 403 that's more prejudicial than any insight  
21 that it gives; so I would ask that that be excluded as well.

22 THE COURT: All right. I'll hear from the  
23 government. Let me pull....

24 MS. FLIAM: Judge, as it pertains to Exhibit 1, I  
25 don't object if pages 10 through 15 are removed.

1 THE COURT: Just a second. I'm at Exhibit 1. All  
2 right.

3 MS. FLIAM: If pages 10 through 15 are pulled from  
4 that exhibit, I think -- the terms of supervised release, I  
5 don't think those are duplicated anywhere else in that exhibit,  
6 but Mr. Reiman can correct me if I'm wrong.

7 MR. REIMAN: I don't believe so.

8 MS. FLIAM: Okay.

9 THE COURT: Let's go off the record for a moment.

10 (Discussion off the record.)

11 THE COURT: Let's go back on the record.

12 So as to filing number 56, let me just restate it. It's  
13 primarily objections to Exhibit Number 1 and Exhibit Number 11.  
14 So let's take Exhibit Number 1, first of all. And whether it's  
15 stated in the written motion or not, there were two things that  
16 were primarily objected to. One is to the terms of supervised  
17 release, and the government has indicated that they will not be  
18 offering the terms of supervised release. I will sustain that  
19 motion in limine; so pages 10 through 15 of Exhibit 1 will not  
20 be offered.

21 What the government is planning on offering are pages 1  
22 through 5 of the indictment, which is the indictment itself and  
23 which does include the forfeiture notice at pages 2 and 3, and  
24 I believe the defendant is objecting to the items contained in  
25 the forfeiture notice.

1 MR. REIMAN: Yes, sir.

2 THE COURT: All right. And I think based on 403 --

3 MR. REIMAN: Yes, sir.

4 THE COURT: -- primarily?

5 MR. REIMAN: Yes.

6 THE COURT: Okay. And the Court will overrule that.

7 It is part and parcel of the underlying -- it's actually  
8 intertwined with this particular offense itself as far as --  
9 when I say it's intertwined with this particular offense, the  
10 question is: What is he mad about? What is he retaliating  
11 against? I think that is relevant to that and is not -- the  
12 probative value is not outweighed by the prejudicial value. So  
13 all of the indictment will come in. So that's pages 1 through  
14 5 of the certified conviction.

15 Then pages 6 and 7 of Exhibit 1 are not being offered.

16 Danielle, stay with -- okay. So pages 6 and 7 are not  
17 being offered.

18 MS. FLIAM: That's correct.

19 THE COURT: All right. And then page 8 and 9, which  
20 is the judgment, and that's all part of the certified record,  
21 pages 8 and 9 is being offered by the government. The defense  
22 has objected to the length of the imprisonment, the term of the  
23 imprisonment, and I am going to sustain that objection. So on  
24 page 9 where it says "imprisonment," it will read, "The  
25 defendant is hereby committed to the custody of the United

1 States Bureau of Prisons to be imprisoned," all right, and the  
2 words "for a term of 33 months" will be redacted. It's my  
3 understanding he was actually sentenced to that 33-month  
4 sentence after this incident occurred anyway. Is that correct?

5 MR. REIMAN: Yes.

6 THE COURT: All right. So that is Exhibit 1. Is  
7 that clear? So pages 1 through 5 will come in, and that's the  
8 indictment, and pages 8 and 9 will come in with the exception  
9 of the "for a term of 33 months" will be redacted. Any  
10 provisions on supervised release, pages 10 through 15, are not  
11 coming in. All right. So that's my ruling on Exhibit 1.

12 Exhibit 11 is a one-page certified copy of the conviction.  
13 I want to make sure the date of the conviction is correct. I'm  
14 talking about the conviction of January 27, 2017; correct?

15 MS. FLIAM: Yes.

16 THE COURT: All right. And there was an objection,  
17 and I'll let you state the objection, Mr. Reiman.

18 MR. REIMAN: Your Honor, this page includes  
19 discussion about the restitution that's owed. So again I think  
20 we're getting into the facts of that Colorado case, which I  
21 believe, pursuant to the Court's previous order, we weren't  
22 going to get into that. It also has in here that he obviously  
23 didn't make bond 'cause he was getting 641 days for time  
24 served, but it also says Department of Corrections, three  
25 years, so it has the specific sentence that he's getting. So I

1 would object to the part that demonstrates the actual sentence  
2 received.

3 THE COURT: All right. And I will overrule that  
4 objection. Again, under *United States vs. Shelledy* as well as  
5 *United States vs. Crenshaw*, the sentence imposed on a prior  
6 conviction, basically the Eighth Circuit considers it part of  
7 the nature of the offense. It's not a specific detail  
8 regarding the crime. So I'm going to let Exhibit 11 stand as  
9 is, and the objection is overruled.

10 Okay. Now let me go back. I think that was it as to  
11 filing number 56.

12 MR. REIMAN: Yes, sir.

13 THE COURT: Okay. Are there any other motions in  
14 limine that we need to take up from the government?

15 MR. PACKARD: If I could have just a second here. In  
16 the pretrial brief I think I made a -- had a section on  
17 personal information of witnesses. They were just concern- --  
18 well, the government would move in limine to prohibit questions  
19 that call for personally identifying information, and if  
20 Mr. Reiman feels like he wants to ask about that, I would just  
21 ask permission that we approach rather than have the answer be  
22 given on the record in front of the defendant.

23 THE COURT: Okay.

24 MR. PACKARD: I don't expect it to be a problem.  
25 I've talked with Mr. Reiman about it. I just wanted to move in



1 limine because there's been some concerns that have been raised  
2 by the government witnesses.

3 THE COURT: Anything further, Mr. Reiman?

4 MR. REIMAN: No plan to get anywhere close to that,  
5 and if that changes, I'll ask to approach.

6 THE COURT: All right. So the motion in limine will  
7 be sustained as to personal identifying information. If for  
8 some reason that comes up or is necessary during the course of  
9 trial, counsel can both ask to approach, and we will -- I do  
10 not anticipate that it would -- or that it would be necessary,  
11 but if so, you would approach before getting into that area.  
12 Okay?

13 MR. REIMAN: Yes, sir.

14 THE COURT: Anything else from the government?

15 MR. PACKARD: I wanted to give you a heads-up as far  
16 as a cautionary instruction on the explosives conviction. So  
17 the government's plan is to have, on Monday afternoon, a  
18 records custodian from Scottsbluff. Witness two will be David  
19 Tubbs, and he's the alleged victim, and it was my plan to offer  
20 those convictions through his testimony. So he'll talk a  
21 little bit about his background and how he got involved and  
22 then talk about how -- you know, I'll show him that evidence  
23 and how that informed his investigation, specifically that the  
24 prior conviction -- it's Exhibit 11. And so, you know, as far  
25 as the jury being told, you know, you can consider this for

1 limited purposes, I'll try to -- I mean, you'll -- I think  
2 you'll know when I'm getting into that.

3 So I guess I'm just telling you, Judge, I feel like that  
4 might be an appropriate time Monday afternoon when Tubbs is  
5 testifying to tell them you can consider this for limited  
6 purposes, and then I don't -- I don't know that it'll come up  
7 again. I don't think there's any other witnesses that we're  
8 going to bring that conviction up.

9 THE COURT: You're talking about Exhibit 11?

10 MR. PACKARD: That's right.

11 THE COURT: And that's fair, and I've got a limiting  
12 instruction. I'll be ready to go. So I'll watch for that on  
13 Monday afternoon. As far as Exhibit Number 1, sometimes -- and  
14 I'll give it if you want. That's up to the defendant, a  
15 limiting instruction, you know. Basically it's intertwined  
16 with this particular offense, Exhibit Number 1, but I can give  
17 a limiting instruction that you're to consider it just for the  
18 conviction as it was and not to convict for any other  
19 purpose -- or not to consider it for any other purpose. But  
20 sometimes defense lawyers want it, sometimes you don't. So you  
21 can think about it. You don't even have to tell me yet.

22 MR. REIMAN: Okay.

23 THE COURT: So think about --

24 MR. REIMAN: Okay.

25 THE COURT: You can just tell me on Monday. I'll

1 have a limiting instruction. I will give it as to Exhibit  
2 Number 11. I'll plan on that Monday afternoon. I will also  
3 give it as to Exhibit Number 1 when that comes in, but only if  
4 you want it.

5 MR. REIMAN: Okay.

6 THE COURT: Okay. All right. I'll get you the  
7 instructions, then. Anything else that we need?

8 MR. PACKARD: No, Your Honor.

9 THE COURT: Nothing else from the government.  
10 From you, Mr. Reiman?

11 MR. REIMAN: No.

12 THE COURT: All right. If not, thank you. Good luck  
13 in your preparation, and we'll see you Monday morning. So  
14 let's plan on -- normally I meet with you at -- let's still  
15 plan on meeting at 8:30 in my chambers. I think we've handled  
16 almost anything we need to handle, but if there's any  
17 last-minute matters, what I do, then, is meet with the jury as  
18 far as orientation for about 15 minutes. I'll do that at,  
19 like, quarter to nine, and so -- and you won't be in here  
20 during that time. You can finish up with witnesses or  
21 whatever. And then shortly after nine we'll start with --  
22 well, first of all, we'll bring in Mr. Unocic and handle two  
23 very brief matters beforehand as far as the *Missouri v. Frye*,  
24 et cetera, and then we'll bring the jury in for voir dire.

25 Okay. So let's plan on meeting at 8:30, but that

1 shouldn't take more than five minutes, if that.

2 Okay. All right. Good luck. Thank you. We stand  
3 adjourned.

4 (Adjourned at 4:19 p.m.)

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6 \* \* \* \* \*

7

8 I certify that the foregoing is a correct transcript from  
9 the record of proceedings in the above-entitled matter.

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11

12 /s/Lisa G. Grimminger February 6, 2024  
13 Lisa G. Grimminger, RDR, CRR, CRC Date

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## I-N-D-E-X

<u>MOTIONS:</u>	<u>Made</u>	<u>Ruled On</u>
Joint motion to sequester witnesses	2	3
Plaintiff's motion in limine	Filing 44	12
Defendant's motion in limine	Filing 48	17
Defendant's objection to Exhibits 1 and 11	Filing 56	21,24
Plaintiff's motion in limine re: personal identifying information	24	25